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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/635,280
Filing Date: August 09, 2000
Appellant(s): WISCHINSKI, RAINER H.

Richard C. Himelhoch (35,544)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 28, 2006 appealing from the Office action mailed October 20, 2005.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

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(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,909,368	NIXON	6-1999
5,878,257	NOOKALA	3-1999
6,788,980	JOHNSON	9-2004

Ditze, Carsten. "A Customizable Library to support Software Synthesis for Embedded Applications and Micro-Kernel Systems", Proceedings of the 8th ACM SIGOPS European Workshop on Support for composing distributed applications, September 1998, Pages 88-95.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 2, 4-9, 11-13, 15, 17, 19-21 and 23 rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 5,909,368 by Nixon et al. (Nixon) in view of U.S. Patent 5,878,257 by Nookala et al. (Nookala).

With respect to Claim 1, Nixon teaches Nixon teaches A control system (Col. 2 lines 8-10 and Col. 6 lines 45-58), comprising:

an automation device operably connected to a network (Col. 7 lines 18-45);
a network device operably connected to the network (Col. 7 lines 5-17); and,

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a plurality of customized (Col. 5 lines 17-31, Col. 23 lines 46-55 - customized based on constraints and desired application -as in implementation) application programs for the automation device (Col. 20 lines 37-52 - the examiner interprets the plurality of portions, for example function blocks and/or control modules, that make up an overall control strategy, to be a plurality of customized application programs) stored in the network device (Col. 7 lines 8-17 and Col. 28 lines 1-8 and 40-42 and Fig. 17 'Work station' - customized programs are created and stored on a workstation which also functions as the boot server), wherein one customized application program of the plurality of customized application programs controls the automation device (Col. 7 lines 18-25 and Col. 20 lines 37-52 -an automation device will receive a specific portion which is performed to implement an overall control strategy), is selected by the network device in response to a message received at the network device (Col. 28 lines 31-43 and See Fig. 17 steps 1624-1628 - it is inherent that a selection of programming is made and is furthermore responsive to the message if step 1624 from the controller/multiplexer) and sent from the automation device (Col. 28 lines 31-43 and See Fig. 17 steps 1624-1628), as part of a bootstrap protocol (Col. 27 line 66 - Col. 8 line 4 and Fig. 17), and wherein the customized application program is downloaded to the automation device at a boot time of the automation device (Col. 28 lines 35-43 and Col. 27 line 66 - Col. 8 line 24).

Nixon does not explicitly disclose the message being a specific application program request message for the one customized application program. In a system for dynamically programming a programmable memory as part of a boot protocol, Nookala

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teaches an application program request message can be sent from the device requiring the programming. The data source with the application program can transmit the programming in response to the specific application program request message for the application program (Col. 2 line 66- Col. 3 line 3 and Col. 3 lines 43-46).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to take the system disclosed by Nixon and modify it as indicated by Nookala such that the system further comprises a specific application program request message for the one customized application program received at the network device and sent from the automation device. One would be motivated to have this, as there is need for programming a programmable memory from a remote location (Col. 2 lines 1-3 of Nookala).

With respect to Claim 2, Nixon in view of Nookala teaches all the limitations of Claim 1 and further teaches the one customized application program comprises an executive code and a user code (Col. 23 lines 5-17 and lines 34-43 and Col. 24 lines 4-26 of Nixon).

With respect to Claim 4, Nixon in view of Nookala teaches all the limitations of Claim 1 and further teaches the automation device is a programmable logic controller (Col. 7 lines 5-24 of Nixon).

With respect to Claim 5, Nixon in view of Nookala teaches all the limitations of Claim 1 and further teaches the network device is a server (Col. 7 lines 5-17 of Nixon).

With respect to Claim 6, Nixon in view of Nookala teaches all the limitations of Claim 5 and further teaches the server has a TCP/IP protocol stack (Col. 17 lines 15-21 and Col. 18 lines 30-40 of Nixon).

With respect to Claim 7, Nixon in view of Nookala teaches all the limitations of Claim 1 and further teaches the network is Internet (Col. 3 lines 15-21 of Nookala)

With respect to Claim 8, Nixon in view of Nookala teaches all the limitations of Claim 1 and further teaches the network is Ethernet (Col. 6 lines 45-57 of Nixon).

With respect to Claim 9, Nixon in view of Nookala teaches all the limitations of Claim 1 and further teaches the network is Profibus (Col. 7 lines 25-34 of Nixon).

With respect to Claim 11, Nixon in view of Nookala teaches all the limitations of Claim 1 and further teaches the network is Modbus+ (Col. 16 lines 39-48 of Nixon).

With respect to Claim 12, Nixon teaches a method of operating a control system on a network (Col. 2 lines 8-10 and Col. 6 lines 45-58) comprising the steps of: providing a network device for storing (Col. 7 lines 8-17 and Col. 28 lines 1-8 and 40-42 and Fig. 17 'Work station' - customized programs are created and stored on a workstation which also functions as the boot server) a plurality of customized (Col. 5 lines 17-31, Col. 23 lines 46-55 - customized based on constraints and desired application -as in implementation) application programs to be executed on an automation device (Col. 20 lines 37-52 - the examiner interprets the plurality of portions, for example function blocks and/or control modules, that make up an overall control strategy, to be a plurality of customized application programs);

transmitting a message for requesting a network address for the automation device by the automation device (Col. 28 lines 15-24);

transmitting a message by the automation device (Col. 28 lines 31-43 and See Fig. 17 steps 1624-1628) as part of a bootstrap protocol (Col. 27 line 66 - Col. 8 line 4); selecting one customized application program of the plurality of customized application programs in response to the message (Col. 28 lines 31-43 and See Fig. 17 steps 1624-1628 - it is inherent that a selection of programming is made and is furthermore responsive to the message if step 1624 from the controller/multiplexer);

transmitting the one customized application program to the automation device (Col. 28 lines 35-43 and See Fig. 17 steps 1624-1628); and

installing the one customized application program on the automation device (Col. 28 lines 35-43 and See Fig. 17 steps 1624-1628) at a boot time of the automation device (Col. 27 line 66 - Col. 8 line 4).

Nixon does not explicitly disclose the message being transmitted for requesting the one customized application program of the plurality of customized application programs. In a system for dynamically programming a programmable memory as part of a boot protocol, Nookala teaches an application program request message can be sent from the device requiring the programming. (Col. 7 lines 18-25 and Col. 20 lines 37-52 -an automation device will receive a specific portion which is performed to implement an overall control strategy).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to take the method disclosed by Nixon and modify it as indicated by

Nookala such that the system further comprises transmitting a message by the automation device for requesting one customized application program of the plurality of customized application programs for the automation device as part of a bootstrap protocol; selecting the one customized application program in response to the message for requesting customized application program of the plurality of customized application programs. One would be motivated to have this, as there is need for programming a programmable memory from a remote location (Col. 2 lines 1-3 of Nookala).

With respect to Claim 13, Nixon in view of Nookala teaches all the limitations of Claim 12 and further teaches the step of executing the customized one application program on the automation device (Col. 7 lines 18-24 of Nixon).

With respect to Claim 15, Nixon in view of Nookala teaches all the limitations of Claim 12 and further teaches wherein the specific customized application program further comprises: an executive program code for the automation device (Col. 23 lines 5-17 and lines 34-45 and Col. 24 lines 4-26 of Nixon); and, a user program code for the automation device (Col. 23 lines 5-17 and lines 34-45 and Col. 24 lines 4-26 of Nixon), the user program is selected in response to the message requesting one customized application program of the plurality of customized application programs (Col. 28 lines 31-43 and See Fig. 17 steps 1624-1628 of Nixon).

With respect to Claim 17, Nixon teaches a network control system (Col. 2 lines 8-10 and Col. 6 lines 45-58), comprising:
means for operably connecting a network device to the network control system (Col. 7 lines 8-17), the network device stores a plurality of customized (Col. 5 lines 17-31, Col.

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23 lines 46-55 - customized based on constraints and desired application -as in implementation) application program for controlling an automation device (Col. 20 lines 37-52 - the examiner interprets the plurality of portions, for example function blocks and/or control modules, that make up an overall control strategy, to be a plurality of customized application programs);

means for transmitting a message requesting a network address by the automation device (Col. 28 lines 15-24);

means for transmitting a message by the automation device(Col. 28 lines 31-43 and See Fig. 17 steps 1624-1628) as part of a bootstrap protocol (Col. 27 line 66 - Col. 8 line 4);

means for selecting one customized application program of the plurality of customized application programs in response to the message (Col. 28 lines 31-43 and See Fig. 17. steps 1624-1628 - it is inherent that a selection of programming is made and is furthermore responsive to the message if step 1624 from the controller/multiplexer);

means for transmitting the one customized application program to the automation device; and,

means for installing the one customized application program (Col. 28 lines 31-43 and See Fig. 17 steps 1624-1628) at a boot time of the automation device (Col. 27 line 66 - Col. 8 line 4).

Nixon does not explicitly disclose the message being transmitted for requesting the one customized application program of the plurality of customized application

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programs. In a system for dynamically programming a programmable memory as part of a boot protocol, Nookala teaches an application program request message can be sent from the device requiring the programming. The data source with the application program can transmit the programming in response to the specific application program request message for the application program (Col. 2 line 66- Col. 3 line 3 and Col. 3 lines 43-46).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to take the system disclosed by Nixon and modify it as indicated by Nookala such that the system further comprises means for transmitting a message by the automation device for requesting one customized application program of the plurality of customized application programs for the automation device as part of a bootstrap protocol; means for selecting the one customized application program in response to the message requesting the one customized application program. One would be motivated to have this, as there is need for programming a programmable memory from a remote location (Col. 2 lines 1-3 of Nookala).

With respect to Claim 19, Nixon in view of Nookala teaches all the limitations of Claim 17 and further teaches the automation device is a controller (Col. 7 lines 5-24 of Nixon).

With respect to Claim 20, Nixon in view of Nookala teaches all the limitations of Claim 17 and further teaches the network device is a server (Col. 7 lines 5-17 of Nixon).

With respect to Claim 21, Nixon teaches a method of operating a control system on a network (Col. 2 lines 8-10 and Col. 6 lines 45-58) comprising the steps of:

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providing a network device for storing (Col. 7 lines 8-17 and Col. 28 lines 1-8 and 40-42 and Fig. 17 'Work station' - customized programs are created and stored on a workstation which also functions as the boot server) a plurality of customized (Col. 5 lines 17-31, Col. 23 lines 46-55 - customized based on constraints and desired application -as in implementation) application programs to be executed on an automation device (Col. 20 lines 37-52 - the examiner interprets the plurality of portions, for example function blocks and/or control modules, that make up an overall control strategy, to be a plurality of customized application programs);

requesting a network address for the automation device by the automation device (Col. 28 lines 15-24);

requesting the customized application program of the plurality of customized application programs (Col. 28 lines 31-43 and See Fig. 17 steps 1624-1628) as part of a bootstrap protocol (Col. 27 line 66 - Col. 8 line 4);

selecting the one customized application program (Col. 28 lines 31-43 and See Fig. 17 steps 1624-1628 - it is inherent that a selection of programming is made and is furthermore responsive to the message if step 1624 from the controller/multiplexer); transmitting the one customized application program to the automation device (Col. 28 lines 31-43 and See Fig. 17 steps 1624-1628); and,

installing the one customized application program on the automation device (Col. 28 lines 31-43 and See Fig. 17 steps 1624-1628) at a time of the automation device (Col. 27 line 66 - Col. 8 line 4).

Nixon does not explicitly disclose the requesting of the one customized application program is specifically by the automation device. In a system for dynamically programming a programmable memory as part of a boot protocol, Nookala teaches an application program request message can be sent from the device requiring the programming. The data source with the application program can transmit the programming in response to the specific application program request message for the application program (Col. 2 line 66- Col. 3 line 3 and Col. 3 lines 43-46).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to take the method disclosed by Nixon and modify it as indicated by Nookala such that the system further comprises requesting the one customized application program of the plurality of customized application programs by the automation device as part of the bootstrap protocol. One would be motivated to have this, as there is need for programming a programmable memory from a remote location (Col. 2 lines 1-3 of Nookala).

With respect to Claim 23, Nixon in view of Nookala teaches all the limitations of Claim 21 and further teaches selecting a user code for the one customized application program (Col. 23 lines 5-17 and lines 34-45 and Col. 24 lines 4-26 of Nixon); and selecting an executive code for the one customized application program (Col. 23 lines 5-17 and lines 34-45 and Col. 24 lines 4-26 of Nixon).

Claims 3, 14 and 16 rejected under 35 U.S.C. 103(a) as being unpatentable over Nixon and Nookala as applied to claims 2, 12 and 15 above, and further in view of "A

Customizable Library to support Software Synthesis for Embedded Applications and Micro-Kernel Systems" by Ditze (Ditze).

With respect to Claim 3, Nixon in view of Nookala teaches all the limitations of Claim 2 but does not explicitly disclose the executive code is selected in response to the user code selected. Ditze teaches the executive code can be selected based on the user code (Page 90, section 3.2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to take the system disclosed by Nixon in view of Nookala and modify it as indicated by Ditze such that the system further comprises the executive code is selected in response to the user code selected. One would be motivated to have to this as it would optimize the application program by helping to eliminate run-time and memory overhead (Page 90, section 3.2 first paragraph of Ditzte).

With respect to Claim 14, Nixon in view of Nookala teaches all the limitations of Claim 12 and further teaches the step of selecting the one customized application program in response to the request for the one customized application program of the plurality of customized application programs comprises the steps of: identifying the message for requesting one customized application program of the plurality of customized application programs (Col. 28 lines 31-44 and See Fig. 17 steps 1624-1628); and selecting a user application program in response to the message requesting one customized application program of the plurality of customized application programs (Col. 28 lines 31-44 and See Fig. 17 steps 1624-1628), but does not explicitly disclose selecting an executive program in response to the user application program selected.

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Ditze teaches the executive code can be selected based on the user code (Page 90, section 3.2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to take the method disclosed by Nixon in view of Nookala and modify it as indicated by Ditze such that the method further comprises selecting an executive program in response to the user application program selected. One would be motivated to have to this as it would optimize the application program by helping to eliminate run-time and memory overhead (Page 90, section 3.2 first paragraph of Ditze).

With respect to Claim 16, Nixon in view of Nookala teaches all the limitations of Claim 15 but does not teach the executive code is customized in response to the message to meet the minimum requirements for executing the one customized application program. Ditze teaches the executive program code is customized to meet the minimum requirements for executing the application program (Page 90, section 3.2).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to take the method disclosed by Nixon in view of Nookala and modify it as indicated by Ditze such that the executive program code is customized in response to the message to meet the minimum requirements for executing the one customized application program. One would be motivated to have to this as it would optimize the application program by helping to eliminate run-time and memory overhead (Page 90, section 3.2 first paragraph of Ditze).

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Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nixon in view of Nookala and in further view of U.S. Patent 6,788,980 by Johnson (Johnson).

With respect to Claim 10, Nixon in view of Nookala teaches all the limitations of Claim 1.

Nixon in view of Nookala teaches that any network can be used in relation to the field devices (Col. 6 lines 45-49 of Nookala) but does not explicitly disclose the network using ControlNet. However, Johnson teaches that ControlNet is a well known protocol in relation to field devices (Col. 2 lines 15-27).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify system as disclosed by Nixon in view of Nookala such that the network is ControlNet. ControlNet offers multiple controllers controlling I/O on the same link. One would be motivated to have this since ControlNet is a well known protocol typically used in a field device environment (Col. 2 lines 15-27 of Johnson).

(10) Response to Argument

Argument A.1. on pages 11-12 of the Appeal Brief, 1. Claims 1, 2, 4-9, 11-13, 15, 17, 19-21 and 23

On page 11 of the Appeal Brief, Appellant initially argues the differences between Nixon and the present invention. Particularly, the appellant asserts Nixon performs a user selection of the program to be downloaded and that this is in contrast to the present invention.

The Appellant makes various citations to Nixon in support of the "user selection", including Nixon, Column 10, lines 13-32 and Nixon, Column 7, lines 8-13. However, these citations do not make any reference to a user specifically selecting the program to be downloaded to an automation device at a boot time of the device. These citations are instead directed towards how the user actually creates the customized programs such they can later be downloaded in response to a message from the automation device. It should be obvious that a program has to be created at some point before it can be used/downloaded. For example, in column 10, lines 13-32, it states "providing display screens for enabling the user to select methods or programs that perform the new modified function...". This does not state a selection of a program to be downloaded to an automation device, but is instead referring to how a user can use predefined or existing functions to create a customized program. Column 10, lines 13-32, are related to the "control template system" including a "template generator". These are described in column 10, lines 1-12, which states in part "the template generator 124

is an interface that advantageously allows a user to create new control template functions or modify existing control template functions” (emphasis added). Again, it is clear that this is the actual generation of the customized programming. The customized programs will be downloaded to the automation devices (local controllers) as a part of a bootstrap protocol functionality described in Column 27, line 66, through Column 28, line 43, in Nixon (see also Fig. 17). Note also, Column 7, lines 8-13 of Nixon states, “Main PC2 is configured to generate, in response to user input commands, various control routines that are provided via the CAN 3 to one or more local controllers...” (emphasis added). This is clearly generating the customized programs, not the specific selection of a program to be downloaded at a boot time.

Appellant also cites the May 3, 2005 office action (page 12 lines 18-19; note: page 12 is a response to similar arguments). However, it appears the appellant is taking the examiner’s words out of context. The examiner was actually addressing that even if one took into consideration the interpretation that a user is selecting the program to be downloaded to the automation device, the claim language does not exclude such functionality. The claim language states “wherein one customized application program...is selected by the network device in response to a specific application program request message” (from claim 1, emphasis added). The claims only require that the selection is by the network device and is response to the request message. So even taking into consideration the interpretation that a user is causing the network device to select the program for downloading at step 1628 of Fig. 17 (Col. 28 lines 41-43) after receiving the message (i.e. in response to) from step 1624 of Fig. 17 (Col. 28

lines 31-34), the teachings of Nixon are still within the scope of the claimed subject matter. Also note the use of the transitional phrase "comprising".

On Page 12 of the Appeal Brief, Appellant addresses the Nookala reference. Particularly, Appellant states, "Nookala does not disclose how many applications are stored in the data source or whether the instruction codes provide for selection of one of a plurality of programs by the device." It appears applicants are not taking into consideration the combination of references. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

It is not clear as to the relevance of "how many applications are stored in the data source". Particularly, the grounds of rejection based on the combination of Nixon and Nookala, establishes that Nixon teaches the plurality of applications. Nixon further teaches that there is a message sent from the automation device to the network device (Col. 28 lines 31-34 and step 1624 of Fig. 17). In response to this message, a customized program is selected and downloaded to the automation device from the network device as a part of a bootstrap protocol (Fig. 17 is a flow chart of a bootstrap protocol for loading the controls system and Col. 27, line 66 - Col. 28 line 43 is a description of the bootstrap protocol). What Nixon fails to explicitly disclose is the message from the automation device to the network device being a specific application program request, as the message is described as being an operational/status message (Col. 28 lines 31-34), not a specific request for an application program. Note though,

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the network device is still responsive to this message. Nookala teaches a boot protocol that includes a specific application program request sent by a device requiring programming (Col. 2 line 66 - Col. 3 line 3 and Col. 3 lines 43-46). The examiner considers this request message of Nookala as being a "specific application program request" as the request message if for the specific purpose of requesting an application program with the specific response being the downloading of the program to the requesting device. As such, the combination of Nixon and Nookala suggests that the subject matter of "a specific application program request message for the one customized application program" is obvious.

As to appellant's remarks of "whether the instruction codes provide for selection of one of a plurality of programs by the device", it is noted that the claim language does not state how the "specific application program request message" is processed by the network device, only that the selection by the network device is responsive to the request message. In other words, the claim language does not state the "specific application program request message" is providing the explicit function of a selection of one program out of a plurality of programs. Instead, the selection of the "one customized application program" that controls the automation device is made by the network device, and the selection is only responsive to receiving the "specific application program request message". Again, the examiner considers the request message of Nookala as being a "specific application program request" as the request message is for the specific purpose of requesting an application program with the specific response being the downloading of the program to the requesting device.

Argument A.2. on pages 12-13 of the Appeal Brief, 2. No Suggestion or
Motivation to Combine

Appellant argues the lack of suggestion or motivating to combine. On page 12 of the Appeal Brief, Appellants states, "Although both references refer to computer network systems, the two systems have very different purposes and employ very different approaches to achieve their respective goals." Appellant makes this statement, yet does not provide any evidence of how the two systems are "very different". It is clear that Nixon is directed towards issues including the distribution of customized programming throughout a control system (Col. 5 lines 16-33). An important feature of Nixon includes the bootstrap functionality that allows such customized programming to be downloaded to devices at boot time (Col. 27 line 66 - Col. 28 line 43 and Fig. 17). Nookala teaches a system for remotely programming a programmable memory as part of a boot protocol such that a program can be downloaded to a device at the boot time of that device (Col. 2 line 66 - Col. 3 line 3 and Col. 3 lines 43-46). The examiner does not see how these two systems are "very different".

On page 13 of the Appeal Brief, in the first paragraph, Appellant argues "It is the Examiner's burden to show how this "need" motivates one skilled in the art to remove the user selection from Nixon and instead, substitute the device request feature from Nookala." As explained previously, the user selection in Nixon is related to the actual generation of the customized programming, not the selection, at boot time, of the program to be downloaded. As such, Appellants arguments do not seem relevant to the

issue of motivation. As for the issue of motivation, the examiner takes into consideration what both Nixon and Nookala suggest in relation to downloading of programming at a boot time. This includes the express need in the art stated by Nookala for the functionality related to the specific application program request. The examiner believes this is sufficient motivation for making the combination.

On Page 13 of the Appeal Brief, in the second and third paragraphs, Appellant argues "the disclosures in Nixon and Nookala would lead one skilled in the art away from the combination purposed by the Examiner". Appellant again relies upon the argument of user involvement of Nixon, stating that such user interaction is in contrast to the lack of user interaction of Nookala. The examiner has already discussed how the alleged "user interaction" is actually related to the generation of customized programming and is not directly related to the downloading of programming to the automation device at a boot time. As such, appellant's arguments are not related to the issue of the proposed combination, nor is there any evidence of teaching away.

Argument A.3. on pages 13-14 of the Appeal Brief, 3. There Is No Reasonable Expectation of Success

Appellant argues that there is no reasonable expectation of success. However, Appellant is relying upon the same argument related to a user selection of a program to be downloaded. The examiner has already discussed how the alleged "user interaction" is actually related to the generation of customized programming and is not directly related to the downloading of programming to the automation device at a boot time.

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Appellant has not provided sufficient evidence to show a lack of reasonable expectation of success.

Argument A.4. on pages 14 of the Appeal Brief, 4. The Prior Art Fails to Disclose Each Claim Limitation

Appellant specifically argues "Nookala also fails to disclose a system which requests one customized application from a plurality of customized applications". As discussed above in the response to argument A.1., it is noted that the claim language does not state how the "specific application program request message" is processed by the network device, only that the selection by the network device is responsive to the request message. In other words, the claim language does not state the "specific application program request message" is providing the explicit function of a selection of one program out of a plurality of programs. Instead, the selection of the "one customized application program" that controls the automation device is made by the network device, and the selection is only responsive to receiving the "specific application program request message". The examiner considers the request message of Nookala as being a "specific application program request" as the request message if for the specific purpose of requesting an application program with the specific response being the downloading of the program to the requesting device.

To reiterate the discussion above, Nixon teaches a plurality of applications. Nixon further teaches that there is a message sent from the automation device to the network device (Col. 28 lines 31-34 and step 1624 of Fig. 17). In response to this

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message, a customized program is selected and downloaded to the automation device from the network device as a part of a bootstrap protocol (Fig. 17 is a flow chart of a bootstrap protocol for loading the controls system and Col. 27, line 66 - Col. 28 line 43 is a description of the bootstrap protocol). What Nixon fails to explicitly disclose is the message from the automation device to the network device being a specific application program request, as the message is described as being an operational/status message (Col. 28 lines 31-34). Note though, the network device is still responsive to this message. Nookala teaches a boot protocol that includes a specific application program request sent by a device requiring programming (Col. 2 line 66 - Col. 3 line 3 and Col. 3 lines 43-46). The examiner considers this request message of Nookala as being a "specific application program request" as the request message if for the specific purpose of requesting an application program with the specific response being the downloading of the program to the requesting device. Taking into consideration these teachings of Nixon, the combination of Nixon and Nookala suggests that the subject matter of "a specific application program request message for the one customized application program" is obvious. As such, the combination discloses each of the limitations.

Argument A.5. on pages 14-15 of the Appeal Brief, 5. The Examiner Improperly Used Hindsight Reconstruction

The examiner asserts that the grounds of rejection on record establish a proper prima facie case of obviousness under 35 U.S.C. 103. Additionally, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Argument B.2 on pages 15-16 of the Appeal Brief, 2. No Suggestion or Motivation to Combine

Appellant argues "The Examiner again fails to explain how the prior art provides an incentive or motivation for one skilled in the art to combine features of Ditze with the systems of Nixon and Nookala." For the motivation to combine Ditze with Nixon and Nookala, the Examiner cited Ditze, Page 90, section 3.2, first paragraph. This paragraph is related to the general process of source code customization which includes the selection of an executive code in response to a user code or program. Ditze states that such customization optimizes the program by helping to eliminate run-time and memory overhead. Clearly, such optimization provides sufficient motivation for combining the features of Ditze with the systems of Nixon and Nookala.

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Argument C on pages 16-17 of the Appeal Brief, Nixon in view of Nookala and further in view of Johnson does not render Claim 10 obvious

Appellant relies on the arguments related to claim 1 as claim 10 is dependent on claim 1. As such, the examiner relies on the response to claim 1 arguments discussed above.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

David Lazaro



Conferees:



SALEH NAJJAR
SUPERVISORY PATENT EXAMINER



BHARAT BAROT
PRIMARY EXAMINER